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CHARLES ELMORE CROPLEY
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No. 656

In the Supreme Court of the United States

OCTOBER TERM, 1935

THE UNITED STATES OF AMERICA ET AL., APPELLANTS

v.

J. M. CORRICK AND L. J. KELEHER, A PARTNERSHIP, DOING BUSINESS AS ADAMS, CORRICK & KELEHER, ET AL.

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Northern District of Illinois, Eastern Division

In Equity No. 14900

J. M. CORRICK AND L. J. KELEHER, A PARTNERSHIP doing business as Adams, Corrick, and Keleher, et al., petitioners and appellees

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS and appellants

STATEMENT OF APPELLANTS PURSUANT TO THE PROVISIONS OF RULE 12 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES, SHOWING THAT THAT COURT HAS JURISDICTION TO REVIEW, UPON APPEAL, THE ORDER FOR INTERLOCUTORY INJUNCTION OF THE DISTRICT COURT

I

This suit arose upon petition and complaint of the livestock market agencies doing business at the Union Stock Yards, Chicago, Illinois, seeking to enjoin the United States of America, the Secretary of Agriculture, the Attorney General, and the United States District Attorney for the Northern District

of Illinois, Eastern Division, from enforcing or threatening to enforce the orders of the Secretary of Agriculture dated January 8, 1934, and March 12, 1934, respectively, in Bureau of Animal Industry Docket 402 (a proceeding under the Packers and Stockyards Act, 1921, 42 Stat. 159, U. S. C. A., Title 7, Chapter 9, Secs. 181–229), which orders prescribed maximum rates and charges for the services rendered by the petitioners at the stockyards; and from interfering or threatening to interfere with the collection of rates and charges specified in a schedule or tariff of rates published by petitioners October 19, 1935, to become effective November 1, 1935; and to enjoin and restrain the Secretary of Agriculture from suspending the registration of any of the petitioners because of the collection by such petitioners of the rates and charges contained in said schedule.

The orders of the Secretary of Agriculture dated January 8, 1934, and March 12, 1934, respectively, were attacked by these same petitioners in the case of *C. H. Acker, doing business as C. H. Acker & Co., et al.* v. *United States, et al.*, in Equity No. 13,829, in the District Court of the United States for the Northern District of Illinois, Eastern Division, and in that case the District Court on March 19, 1935, entered a final decree dismissing the petition filed therein. The petitioners in that case have taken an appeal to the Supreme Court.

In the instant case the petitioners sought to enjoin the enforcement of the same orders of the Secretary of Agriculture which were challenged in the *Acker* case upon the ground that said orders had as a matter of law been superseded by the schedule or tariff which petitioners published October 19, 1935.

Section 319 of the Packers and Stockyards Act (U. S. C. A., Title 7, Sec. 217) provides:

> *Proceedings for suspension of orders.* For the purposes of sections 201 to 217 inclusive of this chapter, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of sections 201 to 217 inclusive of this chapter, and to any person subject to the provisions of sections 201 to 217 inclusive of this chapter. (Aug. 15, 1921, c. 64, sec. 316, 42 Stat. 168.)

The applicable provisions of the laws relating to the suspending or restraining the enforcement of orders of the Interstate Commerce Commission, also made applicable by the provision above quoted to the suspending or restraining of the enforcement of orders of the Secretary of Agriculture under the Packers and Stockyards Act, 1921, are found in United States Code, Title 28, Section 47

(Judicial Code, Section 24g, Oct. 22, 1913, c. 32, 38 Stat. 220), which provides for a hearing by a three-judge court upon an application for an interlocutory injunction to suspend or restrain the enforcement of orders of the Interstate Commerce Commission. It further provides:

> An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused.

United States Code, Title 28, Sec. 345 (Judicial Code, Sec. 238, as amended) provides that the Supreme Court shall have appellate jurisdiction over an interlocutory or final judgment or decree of a District Court as provided in Title 28, Sec. 47, referred to and quoted above.

II

The constitutionality of the provisions of the Packers and Stockyards Act, 1921, is not involved.

III

The date of the order for interlocutory injunction sought to be reviewed is December 3, 1935, and the date upon which the application for appeal was presented was December —. 1935.

IV

Under the provisions of the Packers and Stockyards Act, 1921, the Secretary of Agriculture has power to determine and prescribe just and reasonable rates or maximum or minimum rates for market agency services, as defined in the Act (U. S. C. A. Title 7, Sec. 211, c. 64, Sec. 310, 42 Stat. 166). Pursuant to that authority the Secretary entered an order January 8, 1934, prescribing maximum reasonable rates and charges for the services rendered by petitioners, and a supplemental order with respect thereto was entered on March 12, 1935. Both of these orders were upheld by a three-judge district court in an opinion filed February 1, 1935, in the case of *C. H. Acker, doing business as C. H. Acker & Co., et al.* v. *United States, et al.*, in Equity No. 13829, in the District Court for the Northern District of Illinois, Eastern Division. On March 19, 1935, a decree was entered dismissing the petition in that case. An appeal is being taken by the petitioners in that case to the Supreme Court. On October 19, 1935, the petitioners published a new rate schedule purporting to become effective November 1, 1935. The Secretary refused to file this schedule on the ground that it was not authorized by the Act in view of the orders which the Secretary had issued prescribing maximum rates lower than those contained in the schedule filed by petitioners. On October 31, 1935, the petition and com-

plaint in this case was filed seeking to enjoin the defendants from enforcing the orders of the Secretary which were upheld by the District Court in the *Acker* case, and further to enjoin the defendants from interfering or attempting to interfere with the collection of the rates contained in the schedule filed October 19, 1935, and further to enjoin the defendants from suspending the registration of any of the petitioners on account of their collection of the rates and charges contained in the filed schedule. On November 8, 1935, a hearing was held on petitioners' application for interlocutory injunction and on December 3, 1935, the Court entered an order for interlocutory injunction. The appellants pray for a reversal of that order on the ground that the findings of fact and conclusions of law and order for interlocutory injunction are based upon errors of law as more particularly set out in the Assignment of Errors filed herewith. Stated broadly, the appellants contend that the schedule of rates filed October 19, 1935, to be effective November 1, 1935, was unauthorized by the statute and that the same was null and void and did not have the effect of superseding the rates and charges contained in the orders of the Secretary of Agriculture, and that therefore the further enforcement of those orders should not have been enjoined.

V

The cases believed to sustain the jurisdiction of the Supreme Court of the United States are *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420; and *Stafford* v. *Wallace,* 258 U. S. 495, 512.

Respectfully submitted,

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